



DEPARTMENT OF STATE

Washington, D.C. 20520

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OLC #78-2200A

JUN 22 1978

Dear Mr. McIntyre:

By Legislative Referral Memorandum dated June 19, 1978, the Department of State was asked for comments on H. R. 12171, 95th Congress, a bill "to strengthen the right of access of the Comptroller General to public and certain private records, to allow for limited auditing of unvouchered expenditures and for other purposes."

This Department is opposed to Sections 2 and 3 of the bill so far as they apply to expenditures now accounted for by certificate of the Secretary of State.

The Congress has long recognized the need for confidentiality in certain activities conducted by the Executive Branch, particularly in the field of foreign affairs. As early as 1793 the Congress allowed funds "for the purpose of intercourse or treaty" to be handled confidentially. (Act of February 9, 1793, 1 Stat. 300, codified as 31 U.S.C. S. 107.)

The Department of State has received annual appropriations from which expenditures were made solely on the certification of the President or the Secretary of State since those early days. This authority has been examined by the Congress on numerous occasions during the intervening years and it has continuously recognized the need of the Secretary of State to have such authority. Currently the Congress provides each year to the Secretary of State an authorization for an appropriation to meet emergencies arising in the diplomatic and consular service and appropriates the necessary funds for that purpose to be accounted for under the Secretary's certification.

The Honorable,
James T. McIntyre, Jr.,
Director,
Office of Management and Budget,
Washington, D. C.

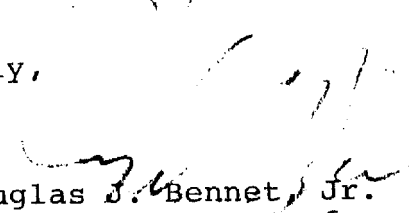
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Expenditures from this annual fiscal year appropriation are under strict management control and are determined to have been actually expended for purposes for which appropriated before a certification is made. This appropriation, and expenditures therefrom, are subject to annual review by four Congressional Committees during the authorization and appropriation processes as well as at the request of those Committees at any time. We believe this existing, long-established, workable procedure accommodates the needs of the appropriate Committees of the Congress and serves the best interests of the Government. In our view, additional independent external audit appraisal authority by the Comptroller General as proposed in the bill is neither needed, nor consistent with the purpose of a confidential foreign affairs account, and is, therefore, unacceptable to the Department of State.

In any event the bill, H. R. 12171, is unacceptably silent with regard to the matter of proper security and control arrangements to be provided such information once turned over to the GAO. We understand that the Department of Justice and other interested agencies will provide appropriate comments and views on this issue as well as the provisions in Section 3 of the bill authorizing the Comptroller General to bring certain court actions and to sign and issue subpoenas.

Should additional information concerning the Department's position on H. R. 12171 be required, we shall be pleased to provide it.

Sincerely,


Douglas J. Bennet, Jr.
Assistant Secretary for
Congressional Relations